

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JENARO D. HERNANDEZ,

Petitioner,

v.

JASON BENNETT,

Respondent.

Case No. 2:24-cv-00982-JHC-TLF

REPORT AND
RECOMMENDATION

Noted for September 20, 2024

The District Court has referred this action to United States Magistrate Judge Theresa L. Fricke. On July 2, 2024, petitioner filed a motion to proceed *in forma pauperis* (IFP) and a proposed habeas corpus petition nominally under 28 U.S.C. § 2241. Dkts. 1, 1-1, 1-2. Petitioner also filed several proposed motions in conjunction with the petition: a “proposed motion requesting discovery” (Dkt. 3), a “proposed request for records pursuant to 28 U.S.C. 2250” (Dkt. 4), a “proposed motion for order response” (Dkt. 5), and “a proposed motion requesting production of the record” (Dkt. 6).

After screening the petition pursuant to Rule 4 of the Rules Governing § 2254 cases, the Court concluded the petition was, in fact, seeking relief under 28 U.S.C. § 2254, and was unexhausted. Dkt. 7. The Court ordered petitioner to show cause why the petition should not be dismissed for failure to exhaust state court remedies. *Id.* at 3. The Court warned petitioner if he failed to adequately respond to the Order, the Court would recommend dismissal of this action. *Id.*

1 Petitioner has failed to respond and therefore failed to comply with the Court's
2 Order. As petitioner has failed to respond to the Court's Order and prosecute this case,
3 the Court recommends this case be DISMISSED without prejudice. The Court further
4 recommends that petitioner's motion to proceed IFP (Dkt. 1), as well as his "proposed
5 motion requesting discovery" (Dkt. 3), "proposed request for records pursuant to 28
6 U.S.C. 2250" (Dkt. 4), "proposed motion for order response" (Dkt. 5), and "proposed
7 motion requesting production of the record" (Dkt. 6) be DENIED as moot. Based on the
8 foregoing, the Court also recommends a certificate of appealability be DENIED.

9 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall
10 have fourteen (14) days from service of this report to file written objections. *See also*
11 Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for
12 purposes of *de novo* review by the district judge, *see* 28 U.S.C. § 636(b)(1)(C), and can
13 result in a waiver of those objections for purposes of appeal. *See Thomas v. Arn*, 474
14 U.S. 140, 142 (1985); *Miranda v. Anchondo*, 684 F.3d 844, 848 (9th Cir. 2012) (citations
15 omitted). Accommodating the time limit imposed by Fed. R. Civ. P. 72(b), the Clerk is
16 directed to set the matter for consideration on **September 20, 2024**, as noted in the
17 caption.

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20 Dated this 5th day of September, 2024.

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23 Theresa L. Fricke
24 United States Magistrate Judge
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